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DEPARTMENT OF COMMERCE

International Trade Administration

[C-122-860]

100- to 150-Seat Large Civil Aircraft from Canada: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of 100- to 150-seat large civil aircraft (aircraft) from Canada. The period of investigation (POI) is January 1, 2016, through December 31, 2016. For information on the estimated subsidy rates, *see* the “Final Determination” section of this notice.

DATES: APPLICABLE [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4987, or (202) 482-4952, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is The Boeing Company. In addition to the Governments of Canada, Quebec and the United Kingdom, the mandatory respondent in this investigation is Bombardier Inc. (Bombardier).

The events that occurred since the Department published the *Preliminary Determination*<sup>1</sup> on October 2, 2017, are discussed in the Issues and Decision Memorandum, which is hereby adopted by this notice.<sup>2</sup> The Issues and Decision Memorandum also details the changes we made since the *Preliminary Determination* to the subsidy rates calculated for the mandatory respondent and all other producers/exporters. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

#### Scope of the Investigation

The scope of the investigation is aircraft from Canada. For a complete description of the scope of the investigation, *see* Appendix I.

#### Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A

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<sup>1</sup> See *100- to 150-Seat Large Civil Aircraft from Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 45807 (October 2, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Memorandum from James P. Maeder, Senior Director performing the duties of the Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to P. Lee Smith, Deputy Assistant Secretary for Policy and Negotiations performing the duties of Deputy Assistant Secretary for Enforcement and Compliance, entitled, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of 100- to 15-Seat Large Civil Aircraft from Canada," dated concurrently with this notice (Issues and Decision Memorandum).

list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix II.

### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), during September and October 2017, the Department verified the subsidy information reported by the Governments of Canada, Quebec and the United Kingdom, and Bombardier. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.<sup>3</sup>

### Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to Bombardier's subsidy rate calculations since the *Preliminary Determination*. As a result of these changes, the Department has also revised the "all-others" rate. For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Analysis Memorandum.<sup>4</sup>

### Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated a rate for Bombardier (the only individually investigated exporter/producer of subject merchandise).

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<sup>3</sup> See Memorandum "Verification of the Questionnaire Responses of Caisse de dépôt et placement du Québec (CDPQ, or Caisse)," dated October 17, 2017; Memorandum "Verification of the Questionnaire Responses of the Government of Canada (GOC)," dated October 23, 2017; Memorandum "Verification of the Questionnaire Responses of Bombardier, Inc. Pertaining to Short Brothers PLC," dated November 1, 2017; Memorandum "Verification of the Questionnaire Responses of the Government of Québec (GOQ)," dated November 3, 2017; Memorandum "Verification of the Questionnaire Responses of the Government of the United Kingdom," dated November 3, 2017; and Memorandum "Verification of the Questionnaire Responses of Bombardier, Inc. and the C Series Aircraft Limited Partnership," dated November 7, 2017.

<sup>4</sup> See Memorandum "Countervailing Duty Investigation of 100- to 150-Seat Large Civil Aircraft from Canada: Final Determination Calculation Memorandum for Bombardier, Inc. and the C Series Aircraft Limited Partnership," dated concurrently with this notice (Final Analysis Memorandum).

Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an “all others” rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or *de minimis*, or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an “all others” rate using “any reasonable method.”

Because the only individually calculated rate is not zero, *de minimis*, or based entirely on facts otherwise available, in accordance with 705(c)(5)(A)(i) of the Act, the rate calculated for Bombardier is assigned as the all-others rate. We determine the total estimated net countervailable subsidy rates to be:

<b>Company</b>	<b>Subsidy Rate</b>
Bombardier, Inc. <sup>5</sup>	212.39 percent
All-Others	212.39 percent

#### Disclosure

The Department will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Continuation of Suspension of Liquidation

In accordance with section 703(d) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of subject merchandise entered, or

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<sup>5</sup> The Department found the following companies to be cross-owned with Bombardier: C Series Aircraft Limited Partnership; Short Brothers PLC (Shorts); and BT (Investment) UK Limited. Additionally, the Department found that Bombardier and Short Brothers PLC comprise an international consortium within the meaning of section 701(d) of the Act.

withdrawn from warehouse, on or after October 2, 2017, the date of publication of the *Preliminary Determination*.

#### International Trade Commission (ITC) Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of aircraft from Canada no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue a CVD order directing CBP to assess, upon further instruction by the Department, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the “Continuation of Suspension of Liquidation” section.

#### Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR

351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

*Dated: December 18, 2017.*

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P. Lee Smith,  
Deputy Assistant Secretary for Policy and Negotiations  
performing the duties of Deputy Assistant Secretary  
for Enforcement and Compliance.

## **Appendix I**

### **Scope of the Investigation**

The merchandise covered by this investigation is aircraft, regardless of seating configuration, that have a standard 100- to 150-seat two-class seating capacity and a minimum 2,900 nautical mile range, as these terms are defined below.

“Standard 100- to 150-seat two-class seating capacity” refers to the capacity to accommodate 100 to 150 passengers, when eight passenger seats are configured for a 36-inch pitch, and the remaining passenger seats are configured for a 32-inch pitch. “Pitch” is the distance between a point on one seat and the same point on the seat in front of it.

“Standard 100- to 150-seat two-class seating capacity” does not delineate the number of seats actually in a subject aircraft or the actual seating configuration of a subject aircraft. Thus, the number of seats actually in a subject aircraft may be below 100 or exceed 150.

A “minimum 2,900 nautical mile range” means:

- (i) able to transport between 100 and 150 passengers and their luggage on routes equal to or longer than 2,900 nautical miles; or
- (ii) covered by a U.S. Federal Aviation Administration (FAA) type certificate or supplemental type certificate that also covers other aircraft with a minimum 2,900 nautical mile range.

The scope includes all aircraft covered by the description above, regardless of whether they enter the United States fully or partially assembled, and regardless of whether, at the time of entry into the United States, they are approved for use by the FAA.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8802.40.0040. The merchandise may alternatively be classifiable under HTSUS subheading 8802.40.0090. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

## **Appendix II**

### **List of Topics Discussed in the Issues and Decision Memorandum**

Summary

Background

Case History

Period of Investigation

Scope of the Investigation

I. Scope Comments

Subsidies Valuation Information

A. Allocation Period

B. Attribution of Subsidies

C. Denominators

D. Creditworthiness

E. Equityworthiness

F. Loan Benchmarks and Interest Rates

Analysis of Programs

A. Programs Determined To Be Countervailable

B. Programs Determined Not to Provide Countervailable Benefits During the  
POI

C. Programs Determined Not To Be Used During the POI

D. Programs Determined To Be Not Countervailable

Analysis of Comments

Comment 1: Countervailability of the CDPQ Equity Infusion

Comment 2: Whether CDPQ is an Authority

Comment 3: Whether the Department Should Accept the Petitioner's Rebuttal  
Factual Information Regarding the CDPQ Verification Report

Comment 4: Equityworthiness of IQ's Investment in CSALP

Comment 5: Whether to Revise the Calculation of the IQ Equity Infusion

Comment 6: Whether the International Consortia Provision of the Act Applies to  
this Investigation

Comment 7: Creditworthiness of Bombardier, Shorts, and the C Series Program

Comment 8: Whether the U.K. Launch Aid Provides a Market Rate of Return

Comment 9: Analyzing the U.K. Launch Aid Separately from the GOC and GOQ  
Launch Aid

Comment 10: The Appropriate Denominator for the GOC Launch Aid



- Comment 11: Capping the Launch Aid Benefit Amounts
- Comment 12: The Appropriate Benchmark for the U.K., GOC, and GOQ Launch Aid
- Comment 13: Whether to Adjust the Benefit Streams for the U.K., GOC, and GOQ Launch Aid
- Comment 14: The Appropriate Benchmark for the Land Provided at Mirabel for LTAR
- Comment 15: Whether ADM is an Authority
- Comment 16: *Emploi-Québec* Grants: Specificity and Benefit Calculation
- Comment 17: Whether the GOQ and GOC SR&ED Tax Credits are Countervailable
- Comment 18: Bombardier's Federal SR&ED Tax Credit
- Comment 19: Specificity and Benefits of U.K. Tax Credits
- Comment 20: Specificity of INI, Resource Efficiency, Innovate UK and ATI Grants
- Comment 21: Removal of the Nautical Mile Range Criterion
- Comment 22: Revision of the Seating Capacity
- Comment 23: Bombardier-Airbus Transaction

## Conclusion

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